

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello,)	COMPLAINT FOR SUMMARY EXECUTION; TORTURE; CRIMES AGAINST HUMANITY; CRUEL, INHUMAN AND DEGRADING TREATMENT; ARBITRARY DETENTION WITHOUT TRIAL; WRONGFUL DEATH; INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; AND CIVIL CONSPIRACY
Plaintiffs,)	
v.)	
)	
Armando Fernández-Larios,)	JURY TRIAL DEMANDED
<hr/> Defendant)	
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1. This is an action for compensatory and punitive damages for torts in violation of international law and domestic law, including the prohibitions against summary execution; torture; crimes against humanity; cruel, inhuman and degrading treatment; arbitrary detention without trial; wrongful death; the intentional infliction of emotional distress; and civil conspiracy. Plaintiffs institute this action against Armando Fernández-Larios. Defendant Fernández-Larios, a retired Chilean army major now living in Florida, was directly involved in the gross and systematic violation of the human rights of the plaintiffs and their next of kin, under the actual or apparent authority of Chilean military and political authorities.

2. Plaintiffs Elsa Cabello, Zita Cabello-Barrueto, and Karin Cabello-Moriarty, citizens of the United States, and Aldo Cabello, a citizen of Chile and legal permanent resident of the United States, seek damages for summary execution; torture; crimes against humanity; cruel, inhuman and degrading treatment; arbitrary detention without trial; wrongful death; the intentional

infliction of emotional distress; civil conspiracy and other violations of customary international law, and the laws and treaties of the United States, the laws of the State of Florida, and the laws of Chile.

3. The events described in this complaint occurred following the 11 September 1973 coup d'état staged by a military junta led by General Augusto Pinochet Ugarte. On the day of the coup, Defendant Armando Fernández-Larios was a highly-trusted lieutenant in the Chilean army who led the final assault on President Allende at the presidential palace, *La Moneda*. In the days following the coup, the defendant was assigned to participate in a campaign to eliminate key political prisoners throughout Chile, as part of a military commission headed by General Arellano Stark. Under the order of General Augusto Pinochet, this commission travelled around Chile to “*uniformar criterios sobre la administracion de justicia*” (to make uniform the administration of justice) with respect to political prisoners detained in northern Chile. With the exception of Arellano Stark, the members of this commission subsequently became high-ranking members of the Chilean secret police, known as the *Direccion de Inteligencia Nacional* or DINA (Directorate of National Intelligence). Defendant Fernández-Larios was responsible for the summary execution, arbitrary detention, torture and abuse of Chileans who were perceived as actual or potential opponents of the Pinochet regime and who were detained at *Copiapo* and other military detention facilities in Chile.

4. In each paragraph of this complaint charging summary execution; torture; crimes against humanity; cruel, inhuman and degrading treatment; and arbitrary detention, the acts were committed by, at the instigation of, in conspiracy with, or with the consent or acquiescence of, an official or person acting in an official capacity, and were inflicted deliberately and intentionally. The injuries were inflicted under color of law and under official authority, for one or more of the

following purposes: to obtain information or a confession from the victim or a third person; to punish the victim for an act the victim or a third person committed or was suspected of having committed; to intimidate or coerce the victim or a third person; and/or due to the perceived status of the victims and their next of kin as political foes of the Pinochet regime.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. Sections 1331, 1332 and 1350, and under the principles of pendent and ancillary jurisdiction. 28 U.S.C. §1350 provides federal jurisdiction for “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” Section 1350 note creates a federal cause of action specifically for torture and summary execution when such acts are committed under the authority or under color of law of a “foreign nation.” Plaintiffs’ causes of action arise under, among others, the following laws, agreements, resolutions and treaties:

- a) Customary international law;
- b) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);
- c) Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948);
- d) The Charter of the International Military Tribunal, Nuremberg, of 8 August 1945 and confirmed by resolutions 3(I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations;
- e) The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, G.A. Res. 2391 (XXIII), annex, 23 U.N. GAOR Supp. (No. 18) at 40, U.N. Doc. A/7218 (1968);
- f) The Rome Statute of the International Criminal Court, U.N. Doc. A/CONF. 183/9, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998;
- g) Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30

- U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976);
- h) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984);
 - i) Organization of American States Inter-American Convention to Prevent and Punish Torture, O.A.S.T.S. No. 67, O.A.S. Doc. OEA/Ser. P, AG/doc. 023/85 rev. 1, at 46-54 (English 1986), *reprinted at* 25 I.L.M. 519 (1986);
 - j) United Nations Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. A/CONF/611, ANNEX I, ESC Res. 663(c), 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc E/3048 (1957), amended E.S.C. Res. 2076, 62 U.N. ESCOR Supp. (No. 1), at 35, U.N. Doc. E/5988 (1977);
 - k) International Covenant on Civil and Political Rights, G.A. Res. 2220A (xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);
 - l) Charter of the Organization of American States, 2 U.S.T. 23984, T.I.A.S. 2361, 119 U.N.T.S. 3, as amended, Protocol of Buenos Aires of 1967, 21 U.S.T. 607, T.I.A.S. No. 6847, 721 U.N.T.S. 324 (1970);
 - m) American Convention on Human Rights (Pact of San Jose, Costa Rica), O.A.S.T.S. No. 36, at 1, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, doc. 21, rev. 2 (English 1978), *reprinted in* 9 I.L.M. 673 (1970);
 - n) American Declaration of Rights and Duties of Man, O.A.S. Res. XXX, OAS Off. Rec. OEA/Ser.L/V/II 23, doc. 21, rev. 6 (English 1979), *reprinted in* 43 Am. J. Int'l L. Supp. 133 (1949);
 - o) Title 28 U.S.C. §1350 (1988) [The Alien Tort Claims Act];
 - p) Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. §1350 note) [The Torture Victim Protection Act];
 - q) Common law of the United States of America;
 - r) Laws of the State of Florida, including but not limited to civil conspiracy, wrongful death, intentional infliction of emotional distress; and
 - s) The laws of the country of Chile.
6. The United States District Court for the Southern District of Florida is the proper venue of this action pursuant to 28 U.S.C. Section 1391.

PARTIES

Defendant

7. Upon information and belief, Defendant Fernández-Larios was born in Washington D.C. on 18 September 1949; his current citizenship is unknown. At the time of the coup d'état on September 11, 1973, Defendant Armando Fernández-Larios was a highly-trusted lieutenant in the Chilean army who led the coup's final assault on President Allende at the presidential palace, *La Moneda*. In the days following the coup, the defendant was assigned to participate in a campaign to eliminate key political prisoners throughout Chile, as part of a military commission headed by General Arellano Stark. Under the order of General Augusto Pinochet, this commission travelled around Chile to “*uniformar criterios sobre la administracion de justicia*” (to make uniform the administration of justice) with respect to political prisoners detained in northern Chile. With the exception of Arellano Stark, the members of this commission subsequently became high-ranking members of the Chilean secret police, known as the *Direccion de Inteligencia Nacional* or DINA (Directorate of National Intelligence). Defendant Fernández-Larios was responsible for the summary execution, arbitrary detention, torture and abuse of Chileans who were perceived as actual or potential opponents of the Pinochet regime and who were detained at *Copiapo* and other military detention facilities in Chile; he later became a trusted member of the Chilean secret police known as the DINA, and when he retired from the Chilean army in 1987, he had risen to the rank of major. In October 1973, he summarily executed, tortured and otherwise abused the plaintiffs' next of kin, Winston Cabello, an economist with the Allende government who was detained as a political prisoner in Copiapo, Chile.

8. Defendant Fernández-Larios came to the United States on or about February 4, 1987, after being sought by U.S. authorities for his involvement in the DINA-sponsored car-bombing in

Washington, DC, which killed the ex-Chilean Ambassador to the U.S., Orlando Letelier, and his assistant, Ronnie Karpen Moffitt. As the result of a plea bargain with U.S. government prosecutors, the defendant plead guilty to being an “accessory after the fact” in the bombing, and provided information regarding the roles of General Manuel Contreras (head of the DINA), Lt. Col. Pedro Espinoza, and General Augusto Pinochet in the Letelier-Moffitt case. After serving a short jail sentence in the U.S., he was released into the Federal Witness Protection Program and is now residing within the jurisdiction of the United States District Court for the Southern District of Florida.

Plaintiffs

9. Plaintiff Elsa Cabello, age 81, is the mother of Winston Cabello, who was summarily executed by the defendant. She is now a naturalized citizen of the United States, residing in the State of California.

10. Plaintiff Zita Cabello-Barrueto, age 52, is Winston Cabello’s sister. She is now a naturalized U.S. citizen residing in the State of California.

11. Plaintiff Karin Cabello-Moriarty, age 38, is also Winston Cabello’s sister. She is now a naturalized U.S. citizen and resides in the State of California.

12. Plaintiff Aldo Cabello, age 54, is Winston Cabello’s brother. He is a now a Legal Permanent Resident of the United States, residing in the State of California.

STATEMENT OF FACTS

13. On 11 September 1973, Chile’s armed forces and police staged a coup d’etat that ousted the democratically-elected socialist government of President Salvador Allende, who died in the takeover of the national palace referred to as “La Moneda.” Following the coup, four military commanders led by General Augusto Pinochet, as Commander-in-Chief and President, installed a

military junta in Chile. Military authorities throughout Chile, including the defendant and his superior officers, immediately launched a systematic assault on those perceived to be potential opponents of the new regime, including ex-cabinet members, Allende government appointees, and supporters and members of the Popular Unity party of Salvador Allende, the Christian Democratic Party, the Chilean Communist Party, and/or the *Movimiento Izquierdista Revolucionario*, or *MIR*.

14. According to a February 1991 report issued by the Chilean government's own "Commission on Truth and Reconciliation" (commonly known as the "Rettig Report"), 2,025 individuals were killed or disappeared by state agents in Chile from September 1973 through March 1990 as a result of this campaign to eliminate potential political opponents following the coup. Thousands more were arbitrarily detained, tortured, and subsequently released. Conservative estimates indicate that at least 50,000 people were arrested and interrogated as suspected political opponents of the new government; an additional 50,000 individuals fled Chile into exile in Argentina, Peru, the United States and other countries.

15. In 1978, the military government of Chile issued a general amnesty decree (*Decreto Ley Numero 2.191*, published in *Diario Oficial*, No. 30,042 (Apr. 19. 1978)) which provided amnesty for the perpetrators, accomplices and accessories "after-the-fact" of criminal acts committed between 11 September 1973 to 10 March 1978 insofar as these individuals were not being tried or sentenced at the time the decree entered into force. On August 24, 1990, the Chilean Supreme Court upheld the application of this amnesty decree to human rights violations committed by the military during that period. Since that time, although twelve complaints involving human rights abuses during this period have been accepted for further investigation by a judge with the Santiago Appeals Court, only investigation of the cases is underway; because of

the amnesty decree, no criminal prosecution would be possible.

16. The transition from military to civilian government began on 5 October 1988 when a plebiscite held to confirm General Pinochet as President until March 1997 received a resounding “NO” vote. Presidential elections were held in December 1989 and were won by the Christian Democrat candidate, Patricio Aylwin, leader of the Coalition for Democracy, *Concertacion para la Democracia*. Before relinquishing office, however, the military government led by General Pinochet imposed restrictions on the power of civilian governments. These restrictions guaranteed that the military would continue to be represented in key institutions, that General Pinochet would remain as Commander of the Armed Forces until March 1998, and that General Pinochet could appoint nine members of the Senate with mandates until that date. During the Aylwin administration, certain steps were taken to address the human rights legacy from the period of the Pinochet rule, including the establishment of the “Commission for Truth and Reconciliation” (*Comision Nacional de Verdad y Reconcilacion*), which investigated deaths and disappearances in Chile from 1973-1990. After further elections in 1993, President Eduardo Frei Ruiz-Tagle inaugurated a second Coalition for Democracy government.

DEFENDANT

Armando Fernández-Larios

17. On September 11, 1973, the date of the coup d’etat which ousted the Allende government and put in its place the three-man military junta led by General Augusto Pinochet, Defendant Fernández- Larios was a highly-trusted lieutenant in the Chilean army and led the final assault against President Allende at the presidential palace, *La Moneda*. In the days following the coup, the defendant was assigned to participate in a campaign to eliminate key political prisoners throughout Chile, as part of a military commission headed by General Arellano Stark (one of the

primary instigators of the coup d'etat). Under the order of General Augusto Pinochet, this commission traveled around Chile to “*uniformar criterios sobre la administracion de justicia*” (to make uniform the administration of justice) with respect to political prisoners detained in northern Chile. With the exception of Arellano Stark, the members of this commission subsequently became high-ranking members of the Chilean secret police, known as the *Direccion de Inteligencia Nacional* or DINA (Directorate of National Intelligence).

18. Defendant Fernández-Larios and the other members of this commission were responsible for summary execution; torture; cruel, inhuman and degrading treatment; and arbitrary detention of Winston Cabello and other individuals perceived as actual or potential opponents of the Pinochet regime who were detained at *Copiapo* and other military detention facilities in Chile.

19. During October 1973, the defendant and the other members of the Arellano Stark commission, acting under official orders, removed, tortured and executed 75 political prisoners held at the *Copiapo*, *Calama*, *La Serena*, and *Antofagasta* detention facilities in northern Chile. This military campaign has subsequently become known in Chile and elsewhere as the “Caravan of Death.”

20. In 1987, the defendant entered the United States in connection with an agreement with U.S. officials to provide information regarding his role and the role of his superiors in the 1976 murders of Orlando Letelier and Ronnie Karpen Moffit in exchange for a limited sentence and protection. After serving a short sentence, he was inducted into the federal Witness Protection Program and resided in an undisclosed place. On information and belief, Defendant Larios recently left the Witness Protection Program and currently lives in Florida.

PLAINTIFFS

Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, Aldo Cabello and the Estate of Winston Cabello

21. Plaintiffs Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello (the mother and siblings of Winston Cabello), sue on their own behalf and on behalf of the Estate of Winston Cabello. Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty are now naturalized citizens of the United States, currently residing in the state of California. Aldo Cabello is a Legal Permanent Resident of the United States, also residing in the state of California.

22. Prior to the coup d'etat on September 11, 1973, Winston Cabello worked as an economist appointed by the Allende government to serve as the head of the Regional Planning Office for Atacama-Copiapo in northern Chile. On September 12, 1973, the day after the coup, Winston Cabello attended a meeting of public service officials in the region that had been called by General Oscar Haag, the military official responsible for Copiapo. After the meeting, the General refused to allow Winston Cabello to leave along with the other officials. Instead, General Haag detained Winston Cabello and subsequently imprisoned him at the military prison in Copiapo. Winston Cabello is believed to have been the first political prisoner to be held in the region of Copiapo following the coup d'etat.

23. During the first month of Winston Cabello's detention, Zita Cabello-Barrueto and her family members were able to visit him in detention three times per week. On September 27, 1973, Winston Cabello was moved to the Copiapo military garrison because the Copiapo jail had become overcrowded with political prisoners, many of who were local professionals who had supported the Allende government. In mid-October, Winston Cabello was told that his file had been reviewed and that his release was imminent.

24. On or about the 16th of October, 1973, however, Defendant Armando Fernández-Larios,

General Sergio Arellano Stark and other members of the Chilean military arrived at Copiapo military garrison by helicopter. General Arellano Stark and the other members of his delegation went through local military files and ordered thirteen political prisoners removed, including Winston Cabello. Thereafter, an announcement (a military “*bando*”) was published in the local newspaper indicating that thirteen prisoners had been killed “while trying to escape” as they were transferred out of detention from Copiapo to La Serena prison. All of those killed were professionals or community leaders considered to be potential opponents of the new military regime.

25. On information and belief obtained since the date of these events, General Arellano Stark and his military contingent, with Defendant Fernández-Larios as his “bodyguard,” traveled around northern Chile by helicopter, stopping at military detention facilities, reviewing files, and removing selected prisoners. The military contingent began this campaign in the towns of Talca, Cauquenes and La Serena before arriving in Copiapo. After leaving Copiapo, it traveled on to Antofagasta and Calama. In the end, some 75 political prisoners were removed and executed during this military operation.

26. After Winston Cabello was killed, his family was provided with a death certificate that indicated that his death was caused by “*herida de balas*” (a gunshot wound). Similar death certificates were provided to the families of other victims of these executions.

27. In July 1990, after the transition of power from the military government of General Augusto Pinochet to the civilian government led by President Patricio Aylwin, an exhumation of a mass grave was undertaken in Copiapo as part of the national reconciliation program. Thirteen bodies were ultimately exhumed; the remains were very well preserved despite the passage of years due to nitrates in the soil. Forensic reports indicated that the victims had been brutally cut with

corvos (curved knives) prior to their deaths; one victim had been beheaded and his skull was missing. There was no indication that the victims had been killed during an escape attempt, and the deaths resulted from inflicted knife wounds, not gunshot wounds.

28. In a resignation letter presented to the Chilean Army on 12 November 1985, Defendant Fernández-Larios acknowledged that he had been ordered by his superiors to participate in this mission led by General Sergio Arellano Stark during October 1973. (“*Que el año 1973 mi grado era de oficial subalterno (teniente) y en octubre del año en cuestion fui comandado por mis superiores a desempeñarme como responsable de la seguridad personal del general Sergio Arellano Stark...*”) In 1973, I was a subalternate (lieutenant) and in October of that year I was ordered by my superiors to take responsibility for the personal security of General Sergio Arellano Stark).

29. On information and belief, the summary execution of Plaintiff Cabellos’ next of kin, Winston Cabello, was conducted with the direct participation of Defendant Fernández-Larios, in conspiracy with others, including General Augusto Pinochet and General Arellano Stark.

GENERAL ALLEGATIONS

30. Unless otherwise set forth below, all acts and omissions alleged by the plaintiffs or their next of kin took place in northern Chile during October 1973.

31. The acts described herein were committed by, at the instigation of, with the consent or acquiescence of, or in conspiracy with, an official or person acting in an official capacity, and were inflicted deliberately and intentionally. The injuries were inflicted under color of law and under official authority, for one or more of the following purposes: to obtain information or a confession from the victim or a third person; to punish the victim for an act the victim or a third person committed or was suspected of having committed; to intimidate or coerce the victim or a

third person; and/or due to the perceived status of the plaintiffs or their next of kin as politically opposed to the newly-formed military government of Chile led by General Augusto Pinochet.

32. The unlawful acts perpetrated against the plaintiffs or their next of kin described herein were part of a widespread, systematic or large-scale attack designed, ordered, implemented, participated in and/or directed by the defendant and other members of the Chilean military against individuals perceived as opponents of the Pinochet regime.

33. As a direct and proximate result of the defendant's unlawful conduct, the plaintiffs and/or their next of kin have suffered and will continue to suffer physical injuries, pain and suffering, and extreme and severe mental anguish and emotional distress and the plaintiffs have incurred and will continue to incur medical expenses. Plaintiffs are thereby entitled to general and compensatory damages in amounts to be proven at trial.

34. The conduct of the defendant, as described herein, was malicious, fraudulent and/or oppressive and done with willful and conscious disregard for the plaintiffs' rights and of the deleterious consequences of his actions. Consequently, the plaintiffs are entitled to punitive damages.

35. This proceeding was not previously filed in the United States as the defendant has actively concealed his whereabouts. Any attempt to bring suit against the defendant in Chile prior to the plaintiffs' departure from the country would have been futile. In 1978, the military government of Chile issued a general amnesty decree (*Decreto Ley Numero 2.191*) which provided amnesty for the perpetrators, accomplices and accessories "after the fact" of criminal acts committed between 11 September 1973 to 10 March 1978 insofar as these were not being tried or sentenced at the time the decree entered into force. Article 4 of the decree provided the only exception included crimes related to the Letelier-Moffitt case. In response to a petition brought by citizens

groups, on August 24, 1990, the Chilean Supreme Court unanimously upheld the application of this amnesty decree to human rights violations committed by the military during that period. Consequently, all the acts alleged herein fall within the terms of the amnesty decree and cannot be prosecuted in Chile.

FIRST CLAIM FOR RELIEF
(Summary Execution)

36. The Estate of Winston Cabello, and plaintiffs Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello, on behalf of their next of kin, reallege and incorporate by reference the allegations set forth in paragraphs 1 through 35 as if fully set forth herein.

37. Defendant Fernández-Larios actively participated in the summary execution of the plaintiffs' next of kin, Winston Cabello. Despite the military's attempt to cover up these executions by describing them as having occurred during an escape attempt, the summary execution of Winston Cabello was carried out deliberately under color of official authority for purposes other than as lawful punishment in accordance with due process of law or in accordance with a previous judgment pronounced by a regularly constituted court affording all necessary judicial guarantees.

38. This act of summary execution violated customary international law, 28 U.S.C. §1350, 28 U.S.C. §1350 note, the common law of the United States, and the relevant international treaties, agreements, conventions and resolutions described in paragraph 5 herein.

39. The summary execution of Winston Cabello caused the plaintiffs Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello to fear for their own lives and to suffer severe mental anguish. Further, Plaintiff's next of kin, Winston Cabello, was placed in great fear for his life and suffered severe physical and mental abuse and agony prior to his summary execution.

40. As a result of the summary execution described herein, the plaintiffs have been damaged in an amount to be determined at trial.

41. Defendant's acts were deliberate, willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF
(Torture)

42. The Estate of Winston Cabello, and plaintiffs Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello, on behalf of their next of kin, reallege and incorporate by reference the allegations set forth in paragraphs 1 through 410 as if fully set forth herein.

43. The acts described herein caused the victim, Winston Cabello, severe pain and suffering, both physical and mental.

44. The acts described herein were inflicted deliberately and intentionally for purposes which included, among others, obtaining information or a confession from the victim or a third person, punishing the victim or a third person, intimidating the victim or a third person, or on the basis of discrimination.

45. The acts described herein were inflicted by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity or under color of law.

46. The pain or suffering described herein did not arise from lawful sanctions.

47. The acts described herein constitute torture in violation of customary international law, 28 U.S.C. §1350, 28 U.S.C. §1350 note, the common law of the United States, and the relevant international treaties, agreements, conventions and resolutions described in paragraph 5 herein.

48. The acts described herein placed Winston Cabello in great fear for his life and caused him to

suffer severe physical and mental pain and suffering.

49. As a result of the torture described above, the plaintiffs have been damaged in an amount to be determined at trial.

50. Defendant's acts were deliberate, willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

*THIRD CLAIM FOR RELIEF
(Crimes Against Humanity)*

51. The Estate of Winston Cabello, and plaintiffs Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello, on behalf of their next of kin, reallege and incorporate by reference the allegations set forth in paragraphs 1 through 50 as if fully set forth herein.

52. The acts described herein and committed by the defendant constitute crimes against humanity in violation of customary international law, the laws of the United States, and the relevant international treaties, agreements, conventions and resolutions described in paragraph 5 herein, in particular:

- a) Article 7 of the Rome Statute of the International Criminal Court, A/CONF. 183/9, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998;
- b) The Charter of the International Military Tribunal (8 August 1945) confirmed by resolutions 3(I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations; and
- c) The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, G.A. Res. 2391 (XXIII), annex, 23 U.N. GAOR Supp. (No. 18) at 40, U.N. Doc. A/7218 (1968).

53. Crimes against humanity constitute a constellation of inhumane acts prohibited by international and domestic law when they are committed as part of a widespread or systematic attack against a civilian population. Specifically, Defendant's acts constituted murder,

imprisonment or other severe deprivation of physical liberty, torture, persecution, and other inhumane acts of a similar character. The inhumane and persecutory acts described herein were willfully inflicted as part of a widespread or systematic attack against the civilian population of Chile.

54. Leaders, organizers, instigators and accomplices participating in the formulation or implementation of a common plan to commit these crimes against humanity are responsible for all acts performed by any person in execution of such a plan. In addition to being personally liable for committing crimes against humanity, the defendant is liable for the crimes against humanity committed by his subordinates and co-conspirators.

55. The acts described herein placed Winston Cabello in great fear for his life, separated him from his family members, unlawfully deprived him of his freedom, caused him to suffer severe mental anguish, and ultimately took his life.

56. As a result of the crimes against humanity described above, the Estate of Winston Cabello and Winston Cabello's family members have been damaged in an amount to be determined at trial.

57. Defendant's acts were deliberate, willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF
(Cruel, Inhuman and Degrading Treatment)

58. The Estate of Winston Cabello and plaintiffs Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello, on behalf of their next of kin, reallege and incorporate by reference the allegations set forth in paragraphs 1 through 57 as if fully set forth herein.

59. The acts described herein had the intent and the effect of grossly humiliating and debasing

Winston Cabello, inciting in him fear and anguish, and breaking his physical or moral resistance.

60. The acts described herein were inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

61. The acts described herein violated customary international law, 28 U.S.C. §1350, the common law of the United States, and the relevant international treaties, agreements, conventions and resolutions described in paragraph 5 herein.

62. The acts described herein placed Winston Cabello in great fear for his life, separated him from his family members, and caused him to suffer severe mental anguish. As a result of the cruel, inhuman and degrading treatment described above, the Estate of Winston Cabello and Winston Cabello's family members have been damaged in an amount to be determined at trial.

63. Defendant's acts were deliberate, willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF
(Arbitrary Detention)

64. The Estate of Winston Cabello and plaintiffs Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello, on behalf of their next of kin, reallege and incorporate by reference the allegations set forth in paragraphs 1 through 63 as if fully set forth herein.

65. Defendant's involvement in the arbitrary detention of Winston Cabello was illegal and unjust. Defendant and those acting with him detained Winston Cabello without warrant, probable cause, articulable suspicion, or notice of charges, and failed to accord him due process in a fair and impartial trial.

66. The act of arbitrary detention described herein was inflicted by or at the instigation of or with

the consent or acquiescence of a public official or other person acting in an official capacity.

67. Defendant's act constituted arbitrary detention in violation of customary international law, 28 U.S.C. §1350, the common law of the United States, the statutes and common law of the State of Florida, the laws of Chile, and the relevant international treaties, agreements, conventions and resolutions described in paragraph 5 herein.

68. As a result of the Defendant's act, Winston Cabello was placed in great fear for his life, was separated from his family members, and experienced severe physical and psychological abuse and agony.

69. As a result of this arbitrary detention, the Estate of Winston Cabello and Winston Cabello's family members have been damaged in an amount to be determined at trial.

70. Defendant's acts were deliberate, willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

*SIXTH CLAIM FOR RELIEF
(Wrongful Death)*

71. The Estate of Winston Cabello, and plaintiffs Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello, on behalf of their next of kin, reallege and incorporate by reference the allegations set forth in paragraphs 1 through 70 as if fully set forth herein.

72. Defendant Fernández-Larios' involvement in the summary execution of Winston Cabello constituted wrongful death, actionable under the common law of the United States, the statutes and common law of the State of Florida, and the laws of Chile.

73. As a result of Defendant's actions, Winston Cabello was placed in great fear for his life and experienced severe physical and psychological abuse and agony prior to his wrongful death.

74. As a result of this wrongful death, the Estate of Winston Cabello and his family members

have been damaged in an amount to be determined at trial.

75. Defendant's acts were deliberate, willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

SEVENTH CLAIM FOR RELIEF
(Intentional Infliction of Emotional Distress)

76. The Estate of Winston Cabello, and plaintiffs Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello, on their own behalf and on behalf of their next of kin, reallege and incorporate by reference the allegations set forth in paragraphs 1 through 75 as if fully set forth herein.

77. Defendant's crimes against humanity, summary execution, torture, forced disappearance, arbitrary detention and other acts of cruel, inhuman and degrading treatment constituted outrageous conduct in violation of all normal standards of decency and were without privilege or justification.

78. Defendant's outrageous conduct was intentional and malicious and done for the purposes of causing Winston Cabello and his family members to suffer humiliation, mental anguish and extreme emotional and physical distress. The arbitrary detention and summary execution of Winston Cabello caused his family members, Plaintiffs Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello, severe mental and physical agony.

79. Defendant's outrageous conduct constitutes intentional infliction of emotional distress and is actionable under the laws of the State of Florida and the country of Chile.

80. As a result of the intentional infliction of emotional distress described above, the Estate of Winston Cabello, Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo

Cabello have been damaged in an amount to be determined at trial.

81. Defendant's acts were deliberate, willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

TENTH CLAIM FOR RELIEF
(Civil Conspiracy)

82. The Estate of Winston Cabello, and Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello, on behalf of their next of kin, reallege and incorporate by reference the allegations set forth in paragraphs 1 through 81 as if fully set forth herein.

83. The acts described herein were committed in furtherance of a conspiracy among Chilean military and political figures including the defendant to detain, harm and eliminate perceived political opponents after the ouster of President Allende.

84. The acts described herein constitute a conspiracy to violate the human rights of Winston Cabello, in violation of customary international law, 28 U.S.C. §1350, 28 U.S.C. §1350 note, the common law of the United States, the laws of the State of Florida, the laws of the country of Chile, and the relevant international treaties, agreements, conventions and resolutions described in paragraph 5 herein.

85. As a result of the civil conspiracy described herein, the Estate of Winston Cabello, Elsa Cabello, Zita Cabello-Barrueto, Karin Cabello-Moriarty, and Aldo Cabello have been damaged in an amount to be determined at trial.

86. Defendant's acts were deliberate, willful, intentional, wanton, malicious and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, each Plaintiff prays for judgment against the Defendant as follows:

- a) For compensatory damages according to proof;
- b) For punitive and exemplary damages according to proof;
- c) For reasonable attorneys fees and costs of suit, according to proof;
- d) For injunctive relief necessary to avoid liquidation or transfer of assets; and
- e) For such other and further relief as the court may deem just and proper.

A jury trial is demanded on all issues.

Dated: February 19, 1999
San Francisco, California

Respectfully submitted,

JULIE FERGUSON, Esq.
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UNITED STATES DISTRICT COURT
_____ DISTRICT OF FLORIDA

Elsa Cabello, Zita Cabello-Barrueto,)
Karin Cabello-Moriarty, and Aldo)
Cabello,)
)
)
Plaintiffs,)
)
v.)
)
)
Armando Fernández-Larios,)
Defendant)
_____)
_____)

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing complaint was hand-delivered to the defendant at the following address:

This 19th day of February, 1999.

JULIE FERGUSON, Esq.
Concepcion & Sexton

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